

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6614
PETITION OF MATTHEW AND ANDREA WELLS**

OPINION OF THE BOARD
(Hearing Held: May 15, 2019)
(Effective Date of Opinion: May 22, 2019)

Case No. A-6614 is an application by Matthew and Andrea Wells for a variance to locate an accessory structure (shed) on a property that has no rear lot line. Section 59-4.4.9.B.2.a of the Zoning Ordinance requires that accessory structures be located behind the rear building line of the principal building. Section 59-1.4.2 of the Zoning Ordinance generally defines "rear building line" as "a line along the edge of the principal building facing the rear lot line that extends between side lot lines and is generally parallel to the rear lot line."

The Board of Appeals held a hearing on the application on Wednesday, May 15, 2019. Petitioner Matthew Wells appeared *pro se* and testified in support of the application.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 12, Block 114, Glazewood Manor Subdivision, located at 911 Larch Avenue, Takoma Park, Maryland, 20912 in the R-60 Zone. The subject property is 7,497 square feet in size. It is an unusually-shaped lot with no rear lot line, and with significant frontage along two streets that would meet at an acute angle if extended to their natural intersection, but are instead joined with an arc. See Exhibits 1 and 4(a).

2. The subject property was purchased by the Petitioners in 2016. It contains a single-family house that was built in 1941 and is set far back on the lot. See Exhibits 1, 3, and 4(a). Because the property has "no rear lot line, there is no rear building line, and therefore [the] shed cannot be behind [the rear building line]." See Exhibit 1.

3. The Statement of Justification ("Statement") indicates that the Petitioners intend to build an 8' x 10' shed "on the south side of the house with a 5' setback from Lot 11." It indicates that "[t]here is both a prohibitive topographical slope between Lot 13 and the house, as well as insufficient space for the shed and setbacks in this location, which prevent the shed from being placed there." The Statement notes that "based on the street address and main entrance of the house, the shed will be in the rear of the house" and that based on the Petitioners' lot, "the shed will be placed in the location with the least impact to the neighborhood." See Exhibit 3.

4. The Statement states that the Petitioners have spoken to their abutting and confronting neighbors, and that they have no objections to the proposed placement of the shed. The Statement indicates that the Petitioners are seeking this shed so that they have a place to store bicycles, lawn and garden equipment and sporting goods. See Exhibit 3.

5. At the hearing, Petitioner Matthew Wells testified that his property has no true backyard because it is a corner lot with a house that is situated "far back" on the lot. He testified that he and his wife chose the location for their proposed shed because it would have the least impact on the neighborhood. He testified that the chosen location would maintain a 5-foot setback from Lot 11. Mr. Wells testified that the subject property slopes down from back to front, and that there is currently a 3-foot retaining wall on the side of the property that abuts Lot 11, and a 6-foot retaining wall between the subject property and Lot 13. He testified that because of the topography between the existing house and Lot 13, and the lack of space in that area, that area was not a good option for the placement of the shed. He further testified that the main entrance used for parking and to enter his house (i.e. the "front" of the house) is on Larch Avenue. He noted that his house does not have a driveway or garage.

Mr. Wells testified that he had discussed his plans with his neighbors, and that they had no objections to his proposed shed.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that the subject property is an unusually shaped property with no rear lot line. See Exhibits 1, 3, and 4(a). Because the property lacks a rear lot line, the proposed accessory structure cannot be located behind the rear building line, as is required by the Zoning Ordinance. The Board finds that this is an unusual or extraordinary situation, peculiar to this property, which arises from the property's unusual shape and which satisfies this element of the variance test.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

Per the Statement, the Board finds that the Petitioners purchased this property in 2016, and that the house on the subject property was built in 1941. The Board finds that there is no evidence in the record to suggest that the Petitioners were in any way responsible for the shape of the property, which was presumably established prior to construction of the house, or for the lack of rear lot line. Accordingly, the Board finds that this element of the variance test is satisfied.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

Since there is no rear lot line for this property, it is not possible to determine a location "behind the rear building line of the principal building" as the Zoning Ordinance requires for an accessory structure. As a result, no accessory structure can be located anywhere on this lot without a variance, which the Board finds is a practical difficulty for the Petitioners. The Board finds that the requested accessory structure, an 8' x 10' shed, is modest in size, and will maintain a 5' setback from abutting Lot 11. The Board further finds that the topography between the existing house and abutting Lot 13 precludes location of the proposed shed in that area. Accordingly, the Board finds that the requested variance from the requirement that accessory structures be located behind the rear building line is the minimum necessary to allow the Petitioners to construct the proposed shed, and to overcome the practical difficulty posed for the Petitioners by their property's lack of rear lot line, in satisfaction of this element of the variance test.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that granting a variance to allow the Petitioners to have a shed for the storage of lawn and sports equipment, to be located 5' from the shared property line and behind the face of their house that is opposite the main entrance to their house, will continue the residential use of the home and therefore can be granted without substantial impairment to the intent and integrity of the applicable master plan.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Statement indicates, and Mr. Wells testified, that the Petitioners have discussed their proposed shed with their abutting and confronting neighbors, and that their neighbors have no objections. The Statement further states that "the shed will be placed in the location with the least impact to the neighborhood," a statement which Mr. Wells confirmed in his testimony. See Exhibit 3. In light of this, the Board finds that granting this variance to allow the placement of this shed as shown on Exhibit 4(a), behind the functional "rear" of the house (based on the address and front entrance), will not adversely affect the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance to allow construction of an accessory structure (shed) on a lot with no rear lot line is **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion; and

2. Construction shall be in accordance with Exhibits 4(a) and 5.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Stanley B. Boyd, Vice Chair, with Bruce Goldensohn, Katherine Freeman, and Jon W. Cook in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 22nd day of May, 2019.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

